IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1210 OF 2003

Smt. Nilambari Dinkar Pawar .....Petitioner.

vs.

Shikshan Prasarak Sanstha

and Ors. .....Respondents.

Mihir Desai for the petitioners.

Ms.S.Shreedharan, AGP for respondent nos.6 to 8.

CORAM:S.C.DHARMADHIKARI, J.

JUDGEMENT RESERVED: 5.2.2007

JUDGEMENT PRONOUNCED:12.3.2007

JUDGMENT :

1. By this petition under Article 226 of the Constitution of India, the Petitioner challenges the judgment and order dated 13.12.2002 delivered by the Presiding Officer, School Tribunal, Mumbai

in Appeal No. MUM/26/1995. By this judgment and order, the Tribunal has dismissed the Petitioner's Appeal challenging the order of Termination dated 29.3.1995 issued by Respondent Nos.1 to 5 before me.

2 The Petitioner filed the above Appeal invoking the jurisdiction of the School Tribunal under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Act, 1977 (M.E.P.S Act for short).

3. Petitioner's case is that she was appointed by the Management on 20.7.1993 as an Assistant Teacher. The order of appointment, copy of which is at Exhibit D to the petition, sets out the pay scale and contains a stipulation that the appointment is purely on probation for two years subject to approval from the Education Department. It is her case that during the period of probation, her work and performance was found satisfactory. She never received any Memo or Warning. Her services were therefore protected in

terms of the M.E.P.S Act.

4. The Petitioner has annexed to the petition, copy of the letter dated 28.2.1995 by which a Memo was issued to the Petitioner for her alleged misconduct. She has also referred to her reply to the said Memo forwarded in writing on 7.3.1995. She has then referred to a communication dated 18.3.1995, to which she replies on 25.3.1995 in writing. She submits, that she was harassed mentally by the Management. She has also referred to her letter dated 3.9.1995 addressed by her to the Chairman of the Institute recording therein the harassment and ill-treatment to her. She has then referred to the Termination order dated 29.3.1995.

5. For the purpose of appreciating the rival contentions it would be appropriate if the termination order is reproduced at this stage itself. It reads thus :

TERMINATION ORDER

Date: 29.3.2005

To,

Mrs.Nilambari D.Pawar
Asst.Teacher (Probationary Period)
Parijat High School,
Jogeshwari (E),
Mumbai-400 060.

Madam,

. I am instructed by the Management to inform you that your services in this school are terminated with effect from 12th June, 1955 under Section 5(3) M.E.P.S. conditions of service) Regulation Act, 177.

. As your services were as probationary, you were on probation for two years period as your appointment i.e. 20.7.1993 and during these period your work was found not satisfactory. Your behaviour with the superiors was in subordinate. Your behaviour in the school was also indisciplined. Hence the Management of the School is not desirable to continue you in service of the school any more.

. THEREFORE YOUR SERVICES AS AN ASST.TEACHER IN THE SCHOOL ARE HEREBY TERMINATED WITH EFFECT FROM 12TH JUNE, 1995 UNDER SECTION 5(3) M.E.P.S. (CONDITIONS OF SERVICE) REGULATION ACT 1977).

. You are entitled for salary upto the date 12th June, 1995. Kindly therefore return all the books and the

articles Science materials, fee of the Laboratories, tuition fee of the students and all other materials given to you by the School which are in your possession to the Headmaster of the School on the last day of April, 1995.

Yours faithfully,

(Dr.H.B.HOSKAR)

President
SHIKSHAN PRASARAK SANSTHA

6. According to the Petitioner, she approached the Tribunal challenging the above order in the facts and circumstances referred to above.

7. The Management resisted her Appeal and contended that the Petitioner was appointed on probation and during the said period her work was not satisfactory. Her behaviour with her superiors and the students of the School was not good and cordial. There are several complaints against her by the students as well as by parents. The Headmaster issued several Memos to the Petitioner for her irregularities and indiscipline. A reference is made to a police

complaint with regard to the Petitioner not preparing the Annual result for Standard IX for the academic year 1994-95. This result was retained by the Petitioner with her illegally and without the permission of the Headmaster. The result was not submitted even after the date for declaration was announced by the School. Thus, there was delay in declaring the results and the Management had to face angry protest from the parents. It is only at the Jogeshwari Police Station, that the Petitioner agreed to hand over the result to the school and thereafter forwarded the same to the Headmaster. Thus, the Management justified its action of terminating the petitioner services.

8. The Tribunal framed the necessary points for determination in the light of the rival contentions and by the impugned judgment and order dismissed the Appeal. The Tribunal held that the Petitioner was admittedly a probationer and the period of probation was two years. The Tribunal also noted that the Petitioner received Memos from

the Headmaster to which she replied. The Tribunal perused the documents and negatived the contention of the Petitioner that since the termination order makes reference to her work and behaviour it casts stigma on the character of the Petitioner. In other words, it rejected the argument that the termination order could not have been passed without holding an inquiry. The Tribunal held that considering the recitals of termination order and the law laid down by the Hon'ble Supreme Court and this court, there is no necessity of holding an inquiry. The Petitioner's services are not protected and her Appeal is therefore liable to be dismissed.

9. It is this conclusion of the Tribunal, which is subject matter of challenge in this petition.

10. Mr.Desai, appearing for the Petitioner, submits that, the judgment and order of the Tribunal is ex-facie erroneous and illegal. It is vitiated by error apparent on the face of

the record, in as much as, the Tribunal could not have overlooked the termination order. He submits that the conclusion drawn by the Tribunal is perverse because the termination order itself refers to the conduct and behaviour of the petitioner. There is reference to alleged insubordination by her. Thus, it is an order casting a stigma on her character. Such an order could not have been passed without holding an inquiry and affording to the Petitioner prior opportunity to show cause and defend herself. That being admittedly not done, the impugned order is liable to be quashed and set aside.

11. Mr.Desai, relies upon the following decisions in support of his contentions.

(i) Dipti Banerjee v. Satyendra Nath reported in (1999) 3 SCC 60

(ii) V.P.Ahuja v. State of Punjab and Ors reportead in (2000) 3 SCC 239

(iii) Chandra Prakash Shahi vs. State of U.P. reported in (2000) 5 SCC 152

(iv) Registrar, High Court of Gujarat vs. C.G.Sharma reported in (2005) 1 SCC 132.

(v) Municipal Committee, Sirsa vs. Munshi Ram reportead in (2005) 2 SCC 382.

(vi) State of Punjab vs. Sukhwinder Singh reported in (2005) 5 SCC 447

(vii) Rajasthan State Road Transport Corpn. vs. Zakir Hussain reported in (2005) 7 SCC 447

(viii) Kapatru Vidya Samsthe vs. S.B.Gupta reported in (2005) 7 SCC 524

(ix) Om Prakash Shrivatsava vs. State of M.P. reported in (2005) 11 SCC 488

(x) Maharashtra State Seeds Corpn. Ltd vs. Vilas reported in (2005) 12 SCC 422

(xii) State of Harayana vs. Satyendra Singh reported in AIR 2005 SC 4251

(xii) Abhijit Gupta vs. S.N.B. National Centre reported in (2006) 4 SCC 469

(xiii) State of West bengal vs. Tapas Roy reported in (2006) 6 SCC 453.

(xiv) Hari Ram Maurya vs. Union of India reported in (2006) 9 SCC 167.

(xv) Jai Singh vs. Union of India reported in (2006) 9 SCC 717.

(xvi) Jagdish Mitter vs. Union of India reported in AIR 64 SC 449

(xvii) State of U.P. vs. Madan Mohan Nagar reported in AIR 67 SC 1260.

(xviii) Radhey Shyam Gupta vs. U.P. State

Agro Industries reported in (1999) 2 SCC 21

(xix) Pavnendra Varma vs. Sanjay Gandhi PGI of Medical Sciences reported in (2002) 1 SCC 520.

12. None has appeared for the Management though served. Ms. Sreedharan, Learned AGP has submitted,that the conclusion of the Tribunal is not liable to be interfered at all. The conclusion of the tribunal is based upon the provisions of M.E.P.S Act and Rules so also decisions of this Court and Supreme Court. She submits that merely because a Reference is made to some complaints or certain acts of the Petitioner, that by itself, does not mean that the order casts a stigma on her character. She submits that the order is of termination simplicitor, on ground of unsatisfactory service/work and behaviour. Such an order can always be passed and there is no requirement in law of holding an inquiry. For all these reasons, the petition deserves to be dismissed.

13. With the assistance of the Learned Advocates, I have perused the petition and the Annexures thereto including the termination order. I have also perused the relevant legal provisions and the decisions brought to my notice.

14. For properly appreciating the rival contentions, a reference can usefully be made to the M.E.P.S Act and the relevant rules.

> "5. Certain obligations of Management of private shcools : (1) The Management shall, as soon as possible, fill in, in the manner prescribed every permanent vacancy in a private school by the appointment of a person duly qualified to fill such vacancy:
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> [Provided that unless such vacancy is to be filled in by promotion, the Management shall, before proceeding to fill such vacancy, ascertain from the Educational Inspector, Greater Bombay, [the Education Officer, Zilla Parishad or, as the case may be, the Director or the officer designated by the Director in respect of schools imparting technical, vocational, art or special education,] whether there is any suitable person available on the list of surplus persons maintained by him, for absorption in other schools; and in the event of such person being available, the Management shall appoint that person in such

vacancy.]

(2) Every person appointed to fill a permanent vacancy shall be on probation for a period of two years. Subject to the provisions of sub-sections (3) and (4), he shall, on completion of this probation period of two years, be deemed to have been confirmed.

(3) If in the opinion of the Management, the work or behaviour of any probationer during the period of his probation, is not satisfactory, the Management may terminate his services at any time during the said period after giving him one month's notice [or salary of one month in lieu of notice.]

(4) If the services of any probationer are terminated under sub-section (3) and he is reappointed by the Management in the same school or any other school belonging to it within a period of one year from the date on which his services were terminated, then the period of probation undergone by him previously shall be taken into consideration in calculating the required period of probation for the purposes of sub-section (2).

[(4A) Nothing in sub-section (2), (3) or (4) shall apply to a person appointed to fill a permanent vacancy by promotion or by absorption as provided under the proviso to sub-section (1).

(5) The Management may fill in every temporary vacancy by appointing a person duly qualified to fill such vacancy. The order of appointment

shall be drawn up in the form prescribed in that behalf, and shall state the period of appointment of such person."

15. The Act is enacted to regulate the recruitment and conditions of service of employees in certain private schools. The preamble to the Act reads thus ;

". An Act to regulate recruitment and conditions of service of employees in certain Private Schools.

WHEREAS, it is expedient to regulate the recruitment and conditions of service of employees in certain private schools in the State, with a view to providing such employees security and stability of service to enable them to discharge their duties towards the pupils and their guardians in particular, and the institution and the society in general, effectively and efficiently.

AND WHEREAS, it is further expedient in the public interest to lay down the duties and functions of such employees with a view to ensuring that they become accountable to the Management and contribute their might for improving the standard of

education;

AND WHEREAS, it is also necessary to make certain supplemental, incidental and consequential provisions; it is hereby enacted in the Twenty-eighth year of the Republic of India as follows:"

16. The definitions that are contained in the Act are of "private shcool", "school" and the word "Teacher" as well. Section 4 deals with the terms and conditions of service of employees of Private schools. It states that every employee of a private school shall be governed by such Code of Conduct as may be prescribed. On the violation of any provision of such code of Conduct the employee shall be liable to disciplinary action after conducting an enquiry in such manner as may be prescribed. (See Section 4(2)). Section 4(6) states that no employee of a private school shall be suspended, dismissed or removed or reduced in rank, by the management, except in accordance with the provisions of the M.E.P.S Act and the Rules made in that behalf. Section 5 comes thereafter and sets out certain obligations of management of

private schools. A bare perusal of Section 5 would demonstrate that every permanent vacancy has to be filled in the prescribed manner by appointing a person who is duly qualified to fill such vacancy. Every person so appointed shall be on probation for a period of two years and on completion of the probation of two years he shall be deemed to have been confirmed.

17. Sub-section 3 of Section 5 is very clear, in as much as, if in the opinion of the Management, the work or behaviour of any probationer during the period of probation, is not satisfactory, the Management may terminate his services at any time during the said period after giving one month’s notice or salary of one month in lieu of notice.

18. As far as the appointment of petitioner is concerned, the appointment order makes it clear that she has been appointed on 20.7.1993 purely on probation for two years. Her services have been terminated on 29.3.1995 during

the period of her probation. The termination is permissible if the work or behaviour during the period of probation is not satisfactory. In this behalf, a reference can usefully be made to a decision of this court reported in *1998(1) Bom.Case Reporter page 592 (Shri Vithal Pandharinath Dhere vs. Shree Kedarnath Shikshan Sanstha and Ors).* The Division Bench in para 6 observes as under :-

> "6. We find considerable force in the submission made on behalf of the respondents. In our opinion, section 5(3) of the said Act which provides for termination of services of an employee speaks of 'work' or 'behaviour' of any probationer not found satisfactory. Even assuming that the work of the petitioner was found satisfactory on the basis of non-production of any confidential record as provided under Rule 15(6) the management would be free to come to a conclusion that the behaviour of the employee was not satisfactory. In the instant case, the Tribunal has relied on the representation which was received by the management which prompted the management to pass a resolution in question. The resolution passed by the management was passed on 27th March, 1987 and referring to the representation the resolution stated that the same was received from the teaching and non-teaching staff and it was dangerous and unsatisfactory to keep

> the petitioner in service as according to the Management, the complaints were found to be true and thus a serious note was taken of the fact and that the presence of the petitioner was not found in the interest of the school. In our opinion, the management is best Judge of the situation as to whom to continue and whom not to continue. Admittedly when the petitioner was on probation, it is the satisfaction of the management which decides the issue as to whether a person on probation requires to be continued or not. Coming to the arguments of Mr.Langote, that it would result into a stigma being attached to the character of the petitioner, in our opinion, suffice it to say that the order challenged by Petitioner before the Tribunal simply stated that his services were not required. If as a result of appeal preferred by petitioner certain facts come to light and if they are interpreted as a stigma to the character of petitioner, the petitioner has himself to blame."

19. In yet another decision of this court reported in *1988 (3) BCR page 365 (Priemier Education Society V/s. I.K. Kriplani,* this court has observed as under :-

> "20. A person who is appointed on probation may be relieved from service if he is found unsuitable. It is well established that such removal does not cast any stigma provided it is only removal on the ground of probationer's service being unsatisfactory or

unsuitable. As observed by the Supreme Court in the case of (Hari Singh Mann vs. State of Punjab and Ors) reported in A.I.R. 1974 S.C. 2263) to hold that the words "unfit to be appointed" are a stigma would rob the authorities of the power to judge fitness for work or suitability to the post at the time of confirmation. Termination of services on account of inadequacy for the job or for any temperamental or other defect not involving moral trupitude is not a stigma which can be called discharge by punishment. Fitness for the job is one of the most important reasons for confirmation."

"21. Of course a mere form of the order terminating services simpliciter is not conclusive. If in fact the order of termination is passed in attendence of circumstances which indicate that it is by way of punishment such circumstances can be looked into and the order of termination can be quashed if it is found that it was in fact by way of punishment...."

"23. The whole purpose of probation is to assess whether a person can function properly in the post to which he is appointed. The termination during the probationary period for not coming up to the requirements of the post cannot be considered as punishment. There was therefore, no question of holding an enquiry in a case such as the present case."

20. Rule 15 of the Rules deals with

writing of confidential reports etc. Sub-Rule 6 of that Rule states that performance of an employee appointed on probation shall be objectively assessed by the Head during the period of his probation and a record of such assessment shall be maintained. Thus, an obligation is cast on the Management to appoint the incumbent on probation and judge his/her work and behaviour. The obligation is in public interest. The protection of the Employee is to be seen in the backdrop of such obligation.

21. It is not the argument before me, that, such a record is not maintained. On the other hand, the argument is that the Termination order casts a stigma and such an order could not have been without holding an inquiry.

22. I am unable to accept this argument because of the clear legal provision enabling the Management to terminate the services of a probationer if the work or behaviour is found to be unsatisfactory during the period of the

probation. Merely, because the termination order refers to the behaviour with the superiors being insubordinate and indisciplined, does not mean that a stigma is cast on the character. This is not a case where the Termination order can be said to be vitiated as contended by Mr.Desai. Admittedly, no inquiry was held pursuant to the Memos and Complaints. The Complaints and Memos together with reply of the Petitioner thereto are on record. The same are referred in the Written Statement of the Management. Based upon her work and behaviour and overall assessment of the same, the order is passed. Merely because she imputes motives to the Management in her Appeal to the Tribunal does not mean that the oder is stigmatic. All allegations in the Memo of Appeal are denied and the Management contends that the order is in terms of Section 5 of the Act.

23. Even otherwise, the position in law is well settled. In the latest decision of the Hon'ble Supreme Court reported in *(2006) 9 SCC page 717 Jai Singh vs. Union of India and Ors,*

the Supreme Court has observed that the form of the order is not decisive. However, the Supreme Court has referred to the earlier decisions and held that even if there is some preliminary inquiry or that there were some complaints, that does not mean that such order straightaway casts a stigma.

24. In a three judge bench decision reported in *(2006) 6 SCC page 453 State of West Bengal vs. Tapas Roy,* the Supreme Court observes thus :-

> "7. The order of discharge has, as we have already indicated, set out several instances of the respondent absenting himself unauthorisely from the training centre. These facts have been relied upon for the purpose of concluding that the respondent was not interested in the training and had no respect for discipline. This conclusion was a ground for holding that the respondent was unsuitable for the Police Department.
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> 8. The High Court was of the view that Rule 10 of the Rules did not apply to orders which were stigmatic. As has already been held by this Court in *Pavanendra Narayan Verma v.Sanjay Gandhi PGI of Medical Sciences* that in order to constitute a stigmatic order necessitating a formal inquiry, it

> would have to be seen whether prior to the passing of the order, there was an inquiry into the allegations involving moral turpitude or misconduct so that the order of discharge was really finding of guilt. If any of these three factors are absent, the order would not be punitive. We have also held that stigma in the wider sense of the word is implicit in every order of termination during probation. It is only when there is something more than imputing unsuitability for the post in question, that the order may be considered to be stigmatic. IN our view, the language, quoted earlier in the discharge order, cannot be said to be stigmatic as it neither alleges any moral turpitude or misconduct on the part of the respondent nor was there an inquiry as such preceding the order of discharge. The order has been passed strictly in terms of Rule 10 of the Rules. We are, accordingly, of the view that the appeal must be allowed. It is accordingly, allowed and the impugned order is set aside."

25. In the light of the law laid down by the Hon’ble Supreme court, in my view, there is no substance in the contentions of Mr.Desai that the school Tribunal could not have concluded that the order is innocuous and does not cast a stigma.

26. Before the school Tribunal, an

Affidavit-in-reply was filed and the Management indeed highlighted instances of indisciplined behaviour, but, that has not been made the foundation of the order. The order is based on the overall assessment and performance of the Petitioner during her probation period. The tribunal has recorded the fact that the Petitioner did receive some Memos from the Management. These were prior to the probation period coming to an end. On the other hand, the Memos and materials produced before the Tribunal show that there were some complaints about the work and behaviour of the Petitioner and an assessment is made of her performance by the Management in an overall manner. The word ‘insubordination’ appearing in the Termination order does not mean that the order casts stigma. That aspect has already been dealt with by the Supreme court and the paras reproduced by me hereinabove would show that the Petitioner’s case squarely falls within the parameters laid down therein. The order therefore, is not stigmatic in nature.

27. There is no need to multiply the decisions. This is a clear case of a probationer being terminated in the light of the powers conferred on the Management by the Act after enabling it to make an assessment of the performance, work and behaviour. In such circumstances, and considering the object and purpose of the Act , it would not be fair to interfere with the decision of the Management taken in the peculiar facts of this case.

28. In the result, Writ Petition fails. Rule discharged. There will be no order as to costs.

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